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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2019-OSERS-0001]

Proposed Priority and Requirements--Technical Assistance on State Data Collection--National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) proposes a priority and requirements under the Technical Assistance on State Data Collection program. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2019 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Part B of

the Individuals with Disabilities Education Act (IDEA). This Center would support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use Regulations.gov" in the Help section.

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about the proposed

priority and requirements, address them to Richelle Davis, U.S. Department of Education, 400 Maryland Avenue, SW, room 5172, Potomac Center Plaza, Washington, DC 20202-5108.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue, SW, room 5172, Potomac Center Plaza, Washington, DC 20202-5108. Telephone: (202) 245-7401. Email: Richelle.Davis@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements, we urge you to identify clearly the specific section of the proposed priority or requirement that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priority or requirements could be revised to address potential challenges.

Directed Question: For the proposed priority, the Department is also considering a specific requirement that would limit the reimbursement of indirect costs under this grant competition in order to maximize the funding available to provide TA to States to meet data collection and reporting requirements and improve data collection, coordination, quality, and use under Part B of IDEA.

We are considering this requirement based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head or delegate based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its

Federal cognizant agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, because funding for this program comes from funds reserved by the Department that would otherwise be allocated to States under Part B (which applies a restricted indirect cost rate to State grantees), we are considering limiting indirect costs to maximize the availability of funds for the primary purposes of this priority.

We analyzed historical grantee data for grants previously awarded under CFDA number 84.373 and found a wide range of indirect cost rate agreements in place. We are considering setting a reasonable cap in an amount, for example, between 25 percent to 40 percent for those administrative costs that are indirect costs for grantees, including subrecipients, or potentially implementing an approach to allow programs to seek and justify deviations from negotiated rates. The Secretary invites comments on the practical implications of this proposed indirect cost limitation for grantees and subrecipients, and specific comments on the maximum indirect cost rate, including what a reasonable cap would be and the rationale for the proposed amount, and thoughts on allowing programs to seek and justify deviations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed priority and these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing Regulations.gov. You may also inspect the comments in person in room 5172, 550 12th Street, SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to 1/2 of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the Consolidated Appropriations Act of 2018 gives the Secretary authority to use funds reserved under section

611(c) to “carry out services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.” Consolidated Appropriations Act, 2018; Div. H, Title III of P. L. 115-141; 132 Stat. 745 (2018).

To help ensure this program meets State needs, we invited the public to provide input on the Technical Assistance on State Data Collection program from April 24, 2018, through May 24, 2018, on the ED.gov OSERS Blog.¹ In response to this invitation, we received 63 relevant responses, all of which we considered in our development of this document. Sixty-two supported our continuing to fund TA centers; only one supported one of the other options we presented, specifically, to invite State educational agencies and State lead agencies to directly apply for funds reserved under section 611(c) to purchase TA to improve their capacity to meet their IDEA Part B and Part C data collection requirements. A few commenters noted some concerns regarding overlap between centers and a need for cross-State collaboration. We addressed these concerns in the proposed priority by: (1) including a requirement for the center to offer cross-State collaboration TA

¹ See <https://sites.ed.gov/osers/2018/04/use-of-part-b-program-funds-for-technical-assistance-to-states-on-idea-data-collection/>.

opportunities; and (2) clarifying the scope of this center and the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z, the proposed priority for which is published elsewhere in this issue of the *Federal Register*.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Education Appropriations Act, 2018; Div. H, Title III of P.L. 115-141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Program Regulations: 34 CFR 300.702.

PROPOSED PRIORITY:

The Assistant Secretary proposes the following priority for this program. We may apply this proposed priority in any year in which this program is in effect.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

Background:

The Department has reviewed the data collection and analysis capacity of States to ensure that IDEA data are being collected and accurately reported to the Department and the public. Specifically, the Office of Special Education Programs (OSEP) has reviewed and analyzed information from multiple sources, including Data Quality

Reviews conducted by OSEP to evaluate the accuracy of section 618 data, written and oral communication with States through the data quality process, and State-initiated requests for TA. The Department's assessment is that States have varying needs for TA to improve their data collection capacity and their ability to ensure data are accurate and can be reported to the Department and the public. States also need TA to help them improve their capacity to analyze and use data so they can provide more accurate information about their efforts to improve implementation of IDEA and more accurately target future improvement activities in their State Systemic Improvement Plans (SSIPs) submitted as part of their State Performance Plans/Annual Performance Reports (SPPs/APRs).

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of data by States, OSEP proposes a priority to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

This proposed priority aligns with two priorities from the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the *Federal Register* on March 2, 2018 (83 FR 9096): Priority 2:

Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Children With Disabilities and/or Those With Unique Gifts and Talents.

Proposed Priority:

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (e.g., State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA. However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for those indicators solely associated with children with disabilities ages 3 through 5, such as Indicators B6

(Preschool Least Restrictive Environment), B7 (Preschool Outcomes), and B12 (Early Childhood Transition), and Part B data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection. TA on collecting, reporting, analyzing, and using Part B data required under sections 616 and 618 solely associated with children with disabilities ages 3 through 5 would be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z.

The Data Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (e.g., training modules) and resources (e.g., documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs and LEAs to collect, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (e.g., parents, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS:

In addition to the programmatic requirements contained in the proposed priority, we propose that, to be considered

for funding, applicants must meet the following requirements.

Proposed Requirements:

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these proposed requirements in any year in which this program is in effect.

Applicants must--

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will--

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must--

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to

meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under "Quality of project services," how the proposed project will--

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will--

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide--

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks:

www.osepideasthatwork.org/logicModel and

www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research and make use of evidence-based practices (EBPs).² To meet this requirement, the applicant must describe--

² For purposes of these requirements, "evidence-based practices" (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as both a means of improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe--

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,³ which must identify the intended recipients, including the

that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

³ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of

type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,⁴ which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,⁵ which must identify--

TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

⁴ "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

⁵"Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

that support increased recipient capacity or improved outcomes at one or more systems levels.

(E) Its proposed plan for collaborating and coordinating with Department-funded TA investments and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe--

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.⁶ The evaluation plan must--

⁶ A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b) (2) (ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR and at the end of Year 2 for the review process; and

for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources," how--

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified

in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing intensive, sustained TA.

Final Priority and Requirements

We will announce the final priority and requirements in a document in the *Federal Register*. We will determine the final priority and requirements after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities or requirements subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and requirements would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as

user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits,

both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and

for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of

the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

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